AN ORDINANCE

TO AMEND SECTION 8-42, "POLICE BACKGROUND CHECKS REQUIRED FOR CERTAIN BUSINESSES," AND TO REPEAL AND REPLACE ARTICLE XII, "SEXUALLY ORIENTED BUSINESSES," OF CHAPTER 8, "BUSINESSES," OF THE CODE OF ORDINANCES OF THE CITY OF GREENVILLE REGARDING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the city of Greenville in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) ("On its face, the Ordinance applies to all 'sexually oriented businesses,' which include establishments such as 'adult motels' and 'adult novelty stores,' which are not engaged in expressive activity."); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); and

WHEREAS, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially "adult" nature, *see, e.g., Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store's "argument that it is not an adult entertainment establishment" to be "frivolous at best"); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that "the accuracy and credibility" of the evidence on inventory in adult retail store was suspect, and that testimony was "less than candid" and "suggested an intention to obscure the actual amount of sexually explicit material sold"); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification);

Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that "the nonadult video selections appeared old and several of its display cases were covered with cobwebs"); and

WHEREAS, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is a sexually oriented business, *see, e.g., East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) ("A prominent display advertising an establishment as an 'adult store,' moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials."); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) ("[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such."); *Patterson v. City of Grand Forks*, Case No. 18-2012-CV-00742 (Nov. 1, 2012) (upholding sex paraphernalia store location restriction which exempted stores in regional shopping malls because malls on are on large parcels that buffer sensitive land uses, have their own security personnel, and limit signage and hours of operation); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase "holding out" to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O'Scannlain, J., concurring) (concluding that whether an entity "holds itself out" as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

WHEREAS, the City intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of sexually oriented businesses; and

WHEREAS, the City's regulations shall be narrowly construed to accomplish this end; and

WHEREAS, the City recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the City and City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and South Carolina Constitutions, South Carolina Code, and the South Carolina Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the South Carolina Constitution, but to enact legislation to further the content-neutral governmental interests of the City, to wit, the controlling of secondary effects of sexually oriented businesses;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILE, SOUTH CAROLINA, Section 8-42, "Police background checks required for certain businesses," is amended and Article XII, "Sexually Oriented Businesses," of

Chapter 8, "Businesses," of the Code of Ordinances of the City of Greenville is repealed and replaced to read as follows in Exhibit A which is attached hereto and incorporated herein by reference.

DONE, RATIFIED AND PASSED THIS THE 13 DAY OF OCTOBER, 2014.

MAYOR PRO TEM

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

REVIEWED:

CITY MANAGER

EXHIBIT A

Sec. 8-42 - Police background checks required for certain businesses.

A police background check will be required for the following new businesses prior to issuance of a business license. Background checks may include owners, partners, managers, operators and employees as designated below. In addition to the standard background check, fingerprints, photographs and other information may be required as specified below.

(a) *Amusement centers.* Background check on owners, partners and managers.
(b) *Bingo operators.* Background check on owners, partners and managers.
(c) *Detective agencies.* Background check on owners, partners, managers and all other employees.
(d) *Escort services.* Background check, photographs and fingerprints on owners, partners, managers and all other employees.
~~(e) *Sexually oriented businesses.* Background check on owners, partners, managers and all other employees.~~
(~~f~~e) *Kindergarten, nursery and day cares.* Background check on owners, partners, managers and all other employees.
(~~g~~f) *Pawn shops.* Background check on owners, partners, managers and all other employees.
(~~h~~g) *Precious metal dealers.* Background check on owners, partners, managers and all other employees.
(~~i~~h) *Restaurant, nightclubs, taverns, bars and related clubs.* Background check on owners, partners and managers.
(~~j~~i) *Transient merchants/peddlers/mobile vendors.* Background check on owners, partners, managers and all other employees.
(~~k~~j) *Others.* Others as set out elsewhere in this Code, or as deemed necessary by the revenue administrator.

ARTICLE XII. - SEXUALLY ORIENTED BUSINESSES

Sec. 8-441. - Purpose; findings and rationale.
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Sec. 8-443. - License required.
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Sec. 8-455. - Penalties and enforcement.
Sec. 8-456. - Applicability of article to existing businesses.
Sec. 8-457. - Prohibited conduct.
Sec. 8-458. - Scienter required to prove violation or business licensee liability.
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Sec. 8-460. - Conflicting code provisions repealed.
Sec. 8-461–8-479. - Reserved.

Sec. 8-441. - Purpose; findings and rationale.

(a) *Purpose*. It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

(b) *Findings and Rationale*. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

Imaginary Images, Inc. v. Evans, 612 F.3d 736 (4th Cir. 2010); *D.G. Restaurant, Inc. v. City of Myrtle Beach*, 953 F.2d 140 (4th Cir. 1991); *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074 (4th Cir. 2006); *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4th Cir. 2009); *Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634 (4th Cir. 1999); *Hart Bookstores, Inc. v. Edmisten*, 612 F.2d 821 (4th Cir. 1979); *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986); *Restaurant Row Associates v. Horry County,* 516 S.E.2d 442 (1999); *Condor, Inc. v. Board of Zoning Appeals,* 493 S.E.2d 342 (1997); *Rothschild v. Richland County Bd. of Adjustment,* 420 S.E.2d 853 (1992); *Centaur, Inc. v. Richland County,* 392 S.E.2d 165 (1990); and

Entm't Prods., Inc. v. Shelby County, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan*

Commission, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); *Patterson v. City of Grand Forks*, Case No. 18-2012-CV-00742, Memorandum Decision and Order (Grand Forks Cnty. Dist. Ct. Nov. 1, 2012); *Enlightened Reading, Inc. v. Jackson County*, 2009 WL 792492 (W.D. Mo. March 24, 2009); *MJJG Restaurant, LLC v. Horry County*, 2014 WL 1314445 (D.S.C. Mar. 28, 2014); *Cricket Store 17, LLC v. City of Columbia*, --- F.Supp.2d ---, 2014 WL 526339 (D. S.C. Feb. 10, 2014);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime & Delinquency (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984, 2009; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses,

(June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and Law Enforcement and Investigator Affidavits (Forest Park, GA; Sandy Springs, GA; and Horry County, SC);

the City Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this article are reasonably believed to be relevant to said secondary effects.

The City hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

Sec. 8-442. - Definitions.

For purposes of this article, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"*Adult Bookstore or Adult Video Store*" means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual

activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

(a) At least 35% of the establishment's displayed merchandise consists of said items, or

(b) At least 35% of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items, or

(c) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or

(d) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or

(e) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or

(f) The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or

(g) The establishment maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

"*Adult Cabaret*" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

"*Adult Motion Picture Theater*" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

"*Characterized by*" means describing the essential character or quality of an item. As applied in this article, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

"*City*" means the City of Greenville, South Carolina.

"*City Manager*" means the Greenville City Manager or his or her designee.

"*Employ, Employee, and Employment*" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"*Establish or Establishment*" means and includes any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

(c) The addition of any sexually oriented business to any other existing sexually oriented business.

"*Feature*" means to give special prominence to.

"*Floor Space*" means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

"*Hearing Officer*" means an attorney, not an employee of the City, who is licensed to practice law in South Carolina, and retained to serve as an independent tribunal to conduct hearings under this article.

"*Influential Interest*" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

"*Licensee*" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

"*Nudity*" means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

"*Operator*" means any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

"*Person*" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

"*Premises*" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

"*Regional Shopping Mall (Enclosed)*" means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large "anchor" stores, such as department stores. The common walkway or "mall" is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

"*Regularly*" means the consistent and repeated doing of an act on an ongoing basis.

"*Semi-Nude or Semi-Nudity*" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

"*Semi-Nude Model Studio*" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

(b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(c) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

(2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

"*Sexual Device*" means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

"*Sex Paraphernalia Store*" means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any:

(a) pharmacy, drug store, medical clinic, or any establishment or entity primarily dedicated to providing medical or healthcare products or services; or

(b) any establishment located within an enclosed regional shopping mall.

"*Sexually Oriented Business*" means an "adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," a "semi-nude model studio," or a "sex paraphernalia store."

"*Specified Anatomical Areas*" means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"*Specified Criminal Activity*" means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

(a) criminal sexual conduct and other offenses set forth in S.C. Code §§ 16-3-651 through 16-3-656;

(b) prostitution and other offenses set forth in S.C. Code §§ 16-16-90, 16-15-100, and 16-15-110;

(c) obscenity and other offenses set forth in S.C. Code §§ 15-15-305 through 16-15-425;

(d) narcotics and controlled substances offenses set forth in S.C. Code §§ 44-53-370 through 44-53-445;

(e) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

(f) any offense in another jurisdiction that, had the predicate act(s) been committed in South Carolina, would have constituted any of the foregoing offenses.

"*Specified Sexual Activity*" means any of the following:

(a) intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

"*Transfer of Ownership or Control*" of a sexually oriented business means any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

"*Viewing Room*" means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

Sec. 8-443. - License required.

(a) *Sexually Oriented Business License.* It shall be unlawful for any person to operate a sexually oriented business in the City without a valid sexually oriented business license.

(b) *Employee License.* It shall be unlawful for any person to be an "employee," as defined in this article, of a sexually oriented business in the City without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

(c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the City Manager a completed application made on a form provided by the City Manager. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.

(2) Current business address or another mailing address for the applicant.

(3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to a court order of closure.

(8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The City Manager may waive the requirements of this subsection (c)(8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the City Manager within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) *Signature*. A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.

(e) The information provided by an applicant in connection with an application for a license under this article shall be maintained by the office of the City Manager on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

Sec. 8-444. - Issuance of license.

(a) *Sexually Oriented Business License*. Upon the filing of a completed application for a sexually oriented business license, the City Manager shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the City and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business license application, the City Manager shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Manager shall issue a license unless:

(1) An applicant is less than eighteen (18) years of age.

(2) An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this article has not been paid.

(4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements or the location requirements of this article.

(5) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to an order of closure.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(b) *Employee License.* Upon the filing of a completed application for a sexually oriented business employee license, the City Manager shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business employee license application, the City Manager shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Manager shall issue a license unless:

(1) The applicant is less than eighteen (18) years of age.

(2) The applicant has failed to provide information as required by this article for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this article has not been paid.

(4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to an order of closure.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Sec. 8-445. - Fees.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: one hundred dollars ($100) for the initial fee for a sexually oriented business license and fifty dollars ($50) for annual renewal; fifty dollars ($50) for the initial sexually oriented business employee license and twenty-five dollars ($25) for annual renewal.

Sec. 8-446. - Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the City Manager and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

Sec. 8-447. - Expiration and renewal of license.

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this article.

(b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Sec. 8-448. - Suspension.

(a) The City Manager shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly or recklessly violated this article or has knowingly or recklessly allowed an employee or any other person to violate this article.

(b) The City Manager shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this article.

Sec. 8-449. - Revocation.

(a) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this article or has knowingly or recklessly allowed an employee or any other person to violate this article and a suspension of the licensee's license has become effective within the previous twelve (12) month period.

(b) The City Manager shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

(4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;

(6) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or

(7) The licensee has knowingly or recklessly allowed three (3) or more violations of this article within a twelve-month period.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this article, the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

Sec. 8-450. - Hearing; license denial, suspension, revocation; appeal.

(a) When the City Manager issues a written notice of intent to deny, suspend, or revoke a license, the City Manager shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (hereinafter "Respondent") by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Manager for the Respondent. The notice shall also set forth the following: The Respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the City Manager, a written request for a hearing before the hearing officer. If the Respondent does not request a hearing within said ten (10) days, the City Manager's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued.

(b) If the Respondent does make a written request for a hearing within said ten (10) days, then the City Manager shall, within ten (10) days after the submission of the request, send a notice to the Respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed.

(c) At the hearing, the Respondent shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City Manager's witnesses. The City Manager shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the Respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this article, to the Respondent within five (5) days after the hearing.

(d) If the decision is to deny, suspend, or revoke the license, the decision shall advise the Respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the City Manager to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the Respondent in writing by certified mail of such action. If the Respondent is not yet licensed, the City Manager shall contemporaneously therewith issue the license to the Respondent.

(e) If any court action challenging a licensing decision is initiated, the City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the City Manager: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the City Manager shall immediately issue the Respondent a Provisional License. The Provisional License shall allow the Respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the Respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement.

Sec. 8-451. - Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

Sec. 8-452. - Hours of operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

Sec. 8-453. - Regulations pertaining to exhibition of sexually explicit films on premises.

(a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Manager may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(i) That the occupancy of viewing rooms less than 150 square feet is limited to one person.

(ii) That specified sexual activity on the premises is prohibited.
(iii) That the making of openings between viewing rooms is prohibited.
(iv) That violators will be required to leave the premises.
(v) That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in subsections (5)(i) though (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.

(c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

(e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

Sec. 8-454. - Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the operator of a sexually oriented business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to

the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

(d) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

Sec. 8-455. - Penalties and enforcement.

(a) A person who violates any of the provisions of this article shall be guilty of an offense, and, upon conviction, shall be punishable by a fine of not more than $500.00 and/or by imprisonment for not more than 30 days. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly operated or maintained in violation of this article shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

(c) The City Attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the City, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this article, or any of the laws in force in the City or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Sec. 8-456. - Applicability of article to existing businesses.

(a) *Licensing Requirements.* All preexisting sexually oriented businesses lawfully operating in the City in compliance with all state and local laws prior to the effective date of this article, and all sexually oriented business employees working in the City prior to the effective date of this article, are hereby granted a *de facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this article. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must apply for a license under this article.

(b) *Interior Configuration Requirements.* Any preexisting sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 8-453 and subsection 8-457(b) shall have ninety (90) days from the effective date of this article to conform its premises to said requirements. During said ninety (90) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.

(c) *Other Requirements*. Except as provided for in subsections 8-456(a) and (b), sexually oriented businesses shall comply with this article on the date that it takes effect.

Sec. 8-457. - Prohibited conduct.

(a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

(c) No employee who appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.

(d) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.

(e) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.

(f) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.

(g) A sign in a form to be prescribed by the City Manager, and summarizing the provisions of subsections (a), (b), (c), and (d), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

(h) No person shall operate a sexually oriented business within 1,000 feet of:

(i) A religious institution;
(ii) A day care center or other school;
(iii) A boundary of a residential district;
(iv) A property line of a lot containing a structure having a residential use;
(v) A public park or recreation area;
(vi) A public building;
(vii) A youth activity center; or
(viii) Another sexually oriented business.

(i) Distances provided in paragraph (h) (including subparagraphs (i) through (viii)) above shall be measured in a straight line, without regard to intervening structures, from the structure of the sexually oriented business to the nearest property line of the premises containing another sexually oriented business, a religious institution, a day care center or school, a public park or recreation area, a public building, a youth activity center, a boundary of a residential district, or a lot containing a structure having a residential use.

Sec. 8-458. - Scienter required to prove violation or business licensee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Sec. 8-459. - Severability.

This article and each section and provision of said article hereunder, are hereby declared to be independent divisions and subdivisions and, not withstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said article, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

Sec. 8-460. - Conflicting code provisions repealed.

Any provision(s) in the Greenville City Code specifically in conflict with any provision in this article is hereby deemed inoperative and repealed.

Secs. 8-461–8-479. - Reserved.